IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9942 OF 2004

Smt. Laxmibai Sakharam Jadhav
& Ors. ... Petitioners

Vs.

Smt. Yamunabai Anandrao Baste
& Anr. ... Respondents

Mr. M.M. Sathaye for the petitioners.

Mr. Nilesh R. Khandray for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 29TH MARCH, 2005.

P.C.:-

1. In this petition, the original defendants/tenants have challenged the concurrent findings of fact recorded by the courts below that respondent 1 - the landlady requires the suit premises for her reasonable and bonafide requirement.

2. I have heard the learned counsel appearing for the petitioners. He contended that the case of the landlady is that she is residing in tenanted premises. However, there are no pleadings to that effect and inasmuch as the pleadings are absent and there is no evidence to substantiate this case, the trial court and the lower appellate court were wrong in observing that the landlady was staying in tenanted premises. In support of this contention, the learned counsel relied on the judgment of

the Supreme Court in **Smt. Chander Kali Bail and others, v. Jagdish Singh Thakur and another, AIR 1977 SC 2262** and the judgments of this court in **Namdeo Laxman Nawale v. Chandrasen Khasiram Rajeshirke and others, 2001(2) Mh.L.J. 941 and Hotel Rosalia Pvt. Ltd. v. M/s. Metro Hotels and others, 2001 (2) Mh.L.J. 881.** The learned counsel then contended that the landlady had sold her bungalow in 1992 and, therefore, her requirement is not bonafide. He further contended that it has come on record that the sons of the landlady have their own separate accommodations. The landlady has not stated as to why she does not want to stay with her sons and, therefore, her requirement is not bonafide.

3. I am unable to agree with the learned counsel for the petitioners. In the plaint, the landlady has not stated in so many words that she is staying in tenanted premises. However she has stated that she does not have her own accommodation and that she is staying in someone else's house. In my opinion, this averment sufficiently indicates that the landlady is staying not in her own house but in tenanted premises. This is evident from the fact that in the written statement, the defendants have stated that the plaintiff's case that she does not have her own accommodation and that she is staying as a tenant at some other place is not true. Therefore, the case of the defendant that there is any absence of pleading must fail. In fact, the defendant has correctly understood the case.

4. So far as the sale of the bungalow is concerned, the sale has taken place in the year 1992 and the suit is filed in the year 1998. Therefore, the requirement of the landlady cannot be called as not genuine. It is true that the sons have their own accommodations. However, the landlady cannot be forced to stay with her sons. It is well settled that the landlady is the best judge of her requirement. Her requirement has to be genuine but need not be a dire necessity. In the circumstances of the case, in my opinion, the landlady has proved her reasonable and bonafide requirement. Concurrent finding of fact is unassailable.

5. The judgments cited by the learned counsel for the petitioner are not applicable to this case. In **Namdeo Laxman's case (supra)** this court has observed that an order of eviction cannot be passed mechanically and without application of mind and merely because the landlord desires eviction of the tenant. The landlord has to make out a case sufficient to entitle him to get the order of eviction and therefore it is necessary for the landlord to establish his case with cogent evidence. This proposition cannot be disputed. In this case, the landlady has herself stepped in the witness box. Her evidence is cogent and satisfactory.

6. In **Smt. Chander Kali's case (supra)**, the Supreme Court has observed that where a claim has never been made

in the defence presented no amount of evidence can be looked into upon a plea which was never put forward. In **Hotel Rosalia's case (supra)**, this court has observed that a plaintiff ought to plead all the details which are necessary for claiming relief. Unless landlord gives details, the tenant cannot be expected to meet the case of the landlord.

7. In my opinion, these judgments will have to be distinguished from the facts of the present case because in this case, the defendant has correctly understood the landlady's case. In the written statement, that case is denied. Reliance placed on the judgments by the learned counsel for the petitioners is, therefore, misplaced. In view of the above, I see no merit in the petition. The petition will, therefore, have to be rejected.

8. At this stage, the learned counsel for the petitioners states that one and half years' time may be given to the petitioners to vacate the suit premises. The learned counsel for the respondents objects. In the circumstances of the case, six months' time is given to the petitioners to vacate the suit premises on the petitioners and all adult members residing in the suit premises filing usual undertakings in this court. Hence, I pass the following order.

9. The petition is dismissed. The petitioners are given six months' time to vacate the suit premises on the

petitioners and all adult members of their families filing usual undertakings in this court within four weeks from today to the effect that on expiry of six months the petitioners shall hand over vacant, peaceful and unencumbered possession of the suit premises to respondent 1.

(SMT. RANJANA DESAI, J.)